

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Chabad House, c/o Rabbi Chaim Adelman

Date application filed with the Town Clerk: February 16, 2006

Nature of request: A Special Permit under Section 9.22 of the Zoning Bylaw for uses on a non-conforming lot as follows: a) to recognize the existing residential and assembly building uses; b) to add a use of the building as a daycare center

Location: 30 North Hadley Road (Map 11A, Parcel 13, R-G Zoning District)

Legal notice: Published on March 8 and 25, 2006 in the Daily Hampshire Gazette and sent to abutters on March 3, 2006

Board members: Tom Simpson, Barbara Ford and Hilda Greenbaum

Submissions: The petitioner submitted the following documents with the application:

- A narrative prepared by Sarina Ergas, PE, Civil, describing some of the current building uses, the management plan for the proposed daycare, available on-site parking, assembly and future parking needs, received February 26, 2006;
- A memo from Sarina Ergas to Rabbi Adelman and Building Commissioner Bonnie Weeks outlining some of the Building Code issues for the proposed daycare, dated May 5, 2005;
- Hand-drawn plans for the proposed layout of the newer section of the house, dated February 7, 1996. The relation between these plans and the current configuration of the building is unclear;
- An Amherst GIS map of the site, with proposed parking, a trash/recycling enclosure, play area and new entry for the daycare roughly sketched onto the map.

For the June 26, 2006 continued hearing, the petitioner submitted the following:

- A new Management Plan, to cover all the uses of the Chabad House, prepared by Sarina Ergas, dated June 8, 2006;
- A grid of 10 activities, when and where in the building they take place, the average number of participants, parking needs and the person responsible for the activity, prepared by Sarina Ergas, submitted June 8, 2006;
- Two site plans, one a survey of the site, and the other showing the non-conformities of the building in terms of setback requirements, the proposed parking plan, and the proposed trees to be planted along McClure Street. Both plans were drawn by Eaton Associates and Kuhn Riddle Architects, dated June 16, 2006;
- Floor plans of the three dwelling units, prepared by Kuhn Riddle Architects, date June 13, 2006;
- A memo prepared by Kuhn Riddle Architects of proposed modifications to the existing building and grounds, dated June 16, 2006.

For the October 19, 2006 continued hearing, the petitioner submitted the following:

- Revised site and floor plans, submitted by Kuhn Riddle Architects, dated October 10, 2006;
- A letter from Erica Gees, Kuhn Riddle Architects, to the Amherst Town Manager, dated October 14, 2006, requesting 3 dedicated parking places for the Chabad House proposed daycare along North Hadley Road;
- A receipt from the State Department of Early Education and Care for the application for a child care facility at the Chabad House, dated October 11, 2006;
- A letter from the Parking Services at UMass stating that vehicles could use lot 32 next to the Chabad House between the hours of 5 pm and 7 am free of charge, dated July 21, 2006;
- A proposal for a smoke detection system from ACP Engineering, Inc., dated 9/28/06.

For the November 20, 2006 continued hearing, the petitioner submitted the following:

- A letter from the Parking Services at UMass offering reserved spaces in lot 32 for the Chabad House, plus the option of departmental passes and child-care temporary permits, dated 11/20/06;
- A revised activity grid which included a category for overnight guests and the maximum number of people involved for the residential, religious and educational uses, dated 11/20/06;
- A building code compliance narrative for the Chabad House, prepared by Kuhn Riddle Architects, undated.

Town staff submitted the following documents:

- A memo from the zoning staff assistant, dated March 16, 2006, outlining some parking and management issues that the Board may wish to consider;
- A memo from the Planning Department Land Use Planner listing some outstanding issues derived from a meeting with the petitioner and the Building Commissioner, dated May 23, 2006;
- A second memo from the zoning staff assistant, dated June 23, 2006, summarizing actions taken to date and listing the still outstanding issues;
- The Town Engineer's transmittal, dated June 29, 2006, concerning curb cuts, the need for an accessible ramp to the house, and notes on the water system upgrade needed if the building is to be sprinklered;
- The Assistant Fire Chief's transmittal concerning outstanding fire/safety issues with the house, fire access from both McClure Street and North Hadley Road, dated July 25, 2006;
- A memo from David Ziomek, Conservation Department and staff for the Shade Tree Committee, stating that the trees proposed along McClure Street by the applicant were endorsed by both the Tree Warden and the Shade Tree Committee, dated, October 19, 2006;
- An email from Jonathan Tucker, Planning Director, to the Town Manager, giving his objections to the proposed dedicated parking for the Chabad House along North Hadley Road, dated October 24, 2006.

Site Visit: March 21, 2006

The Board met with Rabbi Adelman and Sarina Ergas at the site. They observed the following:

- An English Tudor house with a large addition, located at the corner of two 2-block long streets – North Hadley Road and McClure Street; there are very few houses on either street;

- A large, southern-most parking lot of the University of Massachusetts, lot 32, located across North Hadley Road;
- The neighborhood, which is a mix of single and multi-family housing;
- A kitchen (unkempt) on the first floor of the house, where several students were cooking and eating during the site visit;
- The large first floor assembly room used for religious services, with a large table in the center and a hand-washing area in the back of the room;
- The Rabbi's study located off the assembly room;
- The six bedrooms on the second and third floors of the original house, and two additional rooms in the basement currently used for boarders;
- A bedroom on the third floor with several bunk beds where Rabbi Adelman says his family stays for Sabbath and holidays;
- A tenant's kitchen in the basement of the house; another "milk" kitchen in the basement was not shown;
- The newer section of the building, which contains two apartments, another assembly space, a universally accessible restroom, and a *mikvah* (ritual bath) with separate entrances for men and women; the women also have a dressing room and an exterior entrance;
- An unlocked doorway connecting the basement assembly room (proposed for the daycare) to the *mikvah* area;
- The back yard that is proposed for the daycare playground, but which was largely unkempt at the site visit, with recycling and refuse scattered in the yard, recycling containers exposed, an abandoned succahmobile, an open burning pit, and a garage filled with accumulated storage.

Public Hearing: March 23, 2006

Rabbi Chaim Adelman, 105 Rocky Hill Road, Hadley, spoke to the petition at the hearing. He gave the following information:

- The Chabad House is a religious institution that is small, non-profit and financially challenged;
- The property is non-conforming at present, and the institution would like to clarify the uses that currently exist at the house, and to request a new use, a daycare, as part of the Chabad House religious mission;
- The property originally was a single-family house that was bought and converted to the Chabad House;
- Currently the Chabad House is used for synagogue, religious classes, meetings, children's classes, then *mikvah*, housing for three rabbis (and families of two rabbis) and rooms for a number of boarders;
- Originally the older side of the house was used for the Adelman family plus a couple of rental rooms;
- Over the last few years, the house has become a popular place, and there are now about 8 boarders. If there is an exemption to the number of boarders for religious uses, the Chabad House would like to ask for that;
- When the application for a building permit was made in 1996, it was for an expansion of a single-family house. According to the petitioner, the Building Commissioner at the time verbally gave permission for three units;
- The petitioner is now asking that the Board grant a Special Permit for a three-family dwelling.

The Board noted that there was a citation issued in April 1997 that the building was non-compliant in terms of number of housing units, also that the kitchen was being used for catering. However, the citation for non-compliance in terms of dwelling units apparently was not enforced. The Special Permit FY98-0038 application to the ZBA for a catering business was not approved.

Mr. Simpson asked about attendance for the various uses of the assembly rooms. The testimony was somewhat confusing, so the following information may not be entirely accurate:

A. Services:

- Friday evening, Saturday morning and Sunday morning services have about 15-20 people attending;
- The downstairs assembly room is used for the program Sunday morning (This is the space proposed for the daycare);
- Children have a program in the downstairs assembly room on Sunday;
- Friday evening meals after the service have about 30 students attending (the range is 25 to 75 people);
- Special theme Sabbaths may have 150 attending over the course of the night; they eat in the family room (downstairs?) from 8 p.m. to midnight. After May when the students leave, these activities stop;
- Over 75 people attended the Passover Seder.

B. Classes:

- There are currently 10 ongoing classes – 5 official classes and 5 tutorials;
- Class size varies from 6 to 25;
- Classes are held Monday, Thursday and Sunday evenings, and one afternoon class per week;
- Most of the students walk from UMass. Some others drive, and park in the UMass lot after 5 p.m.;
- Classes are held in the assembly rooms both on the first floor and downstairs.

Rabbi Adelman said that, in his opinion, all the uses in the Chabad House are religious activities.

The Board noted that there is a boarder in Rabbi Levenburg's apartment, which is in addition to the 8+ boarders currently in the original section of the house. Section 12.142 of the Zoning Bylaw stipulates that no more than 4 unrelated individuals may reside in one dwelling unit.

The Board asked about parking for holidays that occur during the week. The petitioner replied that holidays begin at sundown, and when sundown is 4 p.m., parking can be a problem. After 5 p.m., those attending park at the UMass parking lot.

Ms. Ford stated that the applicant needs a parking plan and permission from the University to park in their lots.

Ms. Greenbaum noted that trash scattered over the yard has been a continual problem at the Chabad House. The applicant said that trash is collected by Amherst Trucking once per week. Ms. Ford said that a resident manager is needed to keep the trash from the yard and ready to be picked up on a weekly basis. Rabbi Adelman said that he tries to take care of the trash.

Ms. Greenbaum noted the untidiness of the first floor kitchen. Rabbi Adelman responded that some of the students who live in the house are affiliated with the Chabad House, some are not. Hence there is a "public" kitchen where religious practices for food are not followed.

In terms of the proposed daycare, the applicant gave the following information:

- The State Office of Children will determine the number of children that can attend based on the square footage of the assembly room in the new section that is designated for daycare;
- Chabad House is planning for 10-15 children to attend the daycare;
- The age range will be 2 years, 9 months to 7 years;
- There will be a new entrance to the daycare room from the front, along East Hadley Road;
- The new entrance will replace an existing window;
- The daycare will be a year-round operation, and will include a summer camp;
- Staff will include two people - Mrs. Adelman, a teacher, and another person.

The Board noted that there are a number of building code violations existing at present which need to be corrected, and that there cannot be more than 4 unrelated persons per dwelling unit.

The applicant responded that Erica Gees of Kuhn Riddle Architects has been engaged to have the property surveyed and to address the building code issues.

Mr. Simpson stated that the hearing must be continued until correct site plans and more clarity in terms of the multiple uses can be presented to the Board. Ms. Greenbaum made a motion to continue the hearing to April 24, 2006. Mr. Simpson seconded the motion, and the vote was unanimous to continue the hearing to April 24, 2006 at 7 p.m.

Continued Public Hearing: April 24, 2006 and May 25, 2006

The requested property survey, building plans, updated management plan and a more clear description of the activities of the Chabad House were not ready by April 24th, so the hearing was continued to May 25th at 7 p.m. The materials still were not ready on May 25th, so the hearing was continued again to June 26, 2006 at 7 p.m. to the First Floor Meeting Room of Town Hall.

Continued Public Hearing: June 26, 2005

Several people represented the petitioner at the continued public hearing: Sarina Ergas, 38 Cosby Street, spoke to the current and proposed uses of the building; Zahava Gottlieb and Rabbi Joseph Gottlieb, residents of the first-floor apartment in the newer section of the house, spoke to the current uses; Anita Lisis, architect for Kuhn Riddle Architects, spoke to the location of the uses in the house, the proposed site plan changes and the memo written by Kuhn Riddle Architects; Mike and Andrea Olkin, 659 South East Street, spoke to the needs of the children for a daycare center. Rabbi Adelman was not able to attend the continued hearing.

Ms. Ergas had prepared a revised memo of the proposed uses and a management plan for the Chabad House, dated June 8, 2006. She also prepared a grid of the various activities, when and where in the building they occur, the average number of participants per activity, the parking needed, and the person responsible for the activity. She gave the following information in addition to her submissions:

- The original house is proposed to house either four (4) unrelated boarders or a family and three (3) unrelated boarders;

- The preference is for four unrelated boarders. Rabbi Adelman stays at the house approximately twice per month;
- There are three kitchens in the original house - a kosher kitchen on the first floor, and two additional kitchens in the basement. One kitchen in the basement is reserved for residents who do not follow the dietary requirements of the religious orientation of the Chabad House; the second is a kosher kitchen, but was not open for the Board to view;
- There are six bedrooms on the second and third floor of the original house;
- There will not be any bedrooms in the basement of the original house in the future;
- The new section of the building contains two 3-bedroom apartments. One apartment is occupied by Rabbi Gottlieb and his family. The other apartment is used by Rabbi Levenberg; he and his family live in a house in Amherst during the week;
- The first floor of the original house – the kitchen and the large assembly room - is used for religious services, classes and religious holidays;
- Rabbi Gottlieb's office is also on the first floor;
- The basement of the newer section is currently used for religious services also, but now is proposed to be the location of the daycare facility.

Some additions/corrections were made to the grid of activities and management plan that Ms. Ergas submitted. They are:

1. The average number of participants attending holiday services and celebrations is 50, not 25;
2. Classes are held 4 evenings per week, not 3. Some of the classes are registered with the University as 1-credit courses;
3. Rabbi Levenberg and Ms. Adelman teach classes at the house in addition to Rabbi Adelman;
4. Ms. Adelman and an assistant will be teaching the daycare classes.
5. A resident, Mark Rose, works around the house and helps organize the refuse and recycling for pickup, not just Rabbi Adelman.

Mr. Simpson asked about the religious uses of the house – whether all of the uses and all of the residents are related to the religious orientation, or whether the applicant is asking for any exemption from the Bylaw for the non-religious boarders. Ms. Ergas said that in her opinion, the boarders meet the definition of belonging to a religious community if they participate in the classes, the religious services and/or the life of the community.

Mr. Olkin stated that he considers himself a community member and friend of the Chabad House, even though he resides elsewhere. He said that it is a welcoming place. When the children now go to the house to meet the bus for school in Longmeadow, they can go into the house and are welcomed there. He hopes that the children will be able to attend school at the Chabad House in the near future. In addition, Mr. Olkin said that the residents observe the prayer of the house, and the Chabad services are comparable to those at a synagogue.

The Board asked about the number of people coming to the house for services. Ms. Gottlieb said that there is a range of attendance, depending on the service. Usually there are 25 people on average for prayer services, but for big holidays, there may be more than 50. When a large group is expected, they have rented a larger room such as the Holiday Inn.

Mr. Simpson asked if there are 50 people for a service, are they all seated or standing in the

assembly room on the first floor. Ms. Gottlieb answered that there is room for 50 in the room.

In terms of parking, Ms. Ergas said that parking can be a problem. Most of the students walk to the house, as do the Orthodox members. Those who drive usually park at the UMass parking lots immediately across North Hadley Road. For services during the academic year, 1/3 of the attendees are students, 2/3 are residents from the surrounding communities. As for the dinners following the services, more students attend than do the residents. Some students attend the dinners only.

For the proposed daycare facility, the following information was given by Ms. Ergas and Ms. Gottlieb:

- The downstairs space of the addition will be dedicated to the daycare Monday through Friday, 9 a.m. to 1 p.m.;
- They expect that the ages of the participants will range from 2 1/2 years to 7 years;
- The daycare will offer Jewish religious education, but will be open to the public;
- The daycare will be closed on Jewish holidays;
- A similar daycare was offered in South Amherst at the Slobody building, located at West Street and Pomeroy Lane. It was a 1/2-day pre-school, and was affordable. The proposed daycare will be the same program as that.
- There is no other school east of the Connecticut River in this area that compares with the proposed daycare.
- During services and holidays, the children play in the proposed daycare area. They anticipate sharing this space if the daycare is approved;
- The children's playground will be in the back yard, although previously it was mentioned to be in the front yard as well.

The use of the *mikvah* is usually two women, two times a week. It is an evening activity, Ms. Ergas said, and is supervised by Ms. Adelman. There is a separate entrance for the bath area and the participants park across the street in the UMass parking area.

Mr. Simpson asked if there was a formal arrangement with the University for Chabad House participants to park in University lots. Anita Licis, an architect for the project, responded that Rabbi Adelman will ask for a letter from UMass that will permit parking in their parking lots.

Ms. Licis discussed the Kuhn Riddle Architects memo about the building and site plan. The major points are:

- Each of the apartments has at least two means of egress – via the main entrance of the house, the deck entrances or the basement of the addition;
- A fire separation wall will need to be installed between the proposed daycare space and the first floor, and between the original house and the apartments;
- With fire separation, a sprinkler system may not be needed, but a fire alarm system will;
- The kitchens in the basements may be able to be retained if adequate fire protection is installed;
- The floor plans for the three dwelling units, daycare, kitchens and assembly spaces that were submitted for the June 22nd hearing are incomplete; they will be updated;
- A survey was completed for the site; it confirmed that much of the front yard area is part of the public way – North Hadley Road.
- The current site plans indicate that waivers from the Board will be needed for cars parking

within the property setback;

- The succahmobile that is stored behind the garage will be removed;
- Eight parking places are shown on the site plan, two of which are compact , 8 x 16 feet;
- Two of the spaces are very close to the original house; those are the spaces that will require a waiver from the ZBA if they are included;
- A cut-out along North Hadley Road for daycare drop-off spaces is proposed. It's entirely within Town property, but the applicants would be responsible for changing the curb cut and creating the drop-off area;
- Feedback from the Fire Department concerning safe access for emergency vehicles will be forthcoming in regards to the drop-off area and the trees proposed for planting within the public way;
- The Chabad House can be more sensitive to neighborhood complaints; planting trees to hide the parking and organizing the trash better should improve the appearance of the site.

The Board made a number of comments:

- Ms. Greenbaum noted that a refuse/recycling shed had been built, but there was junk all over the yard the day of the hearing. The house may need a dumpster instead of bins;
- An on-site manager is needed to keep the site free of trash and safe for the children;
- Ms. Ford stated that, with the roadway all torn up at the corner of McClure Street and North Hadley Road, the DPW should be asked about the future road width, where the water/sewer lines are, curb cuts, etc;
- Outside lighting will be needed for the proposed daycare, both for the new entrance in the front, and for the existing door in the back;
- Landscaping will be needed, particularly for the back yard where the play yard will be added. The submitted plans need to reflect these improvements to the site;
- Ms. Ford asked about snow removal. Ms. Gottlieb said that currently it is pushed into the corner of McClure and North Hadley Road;
- Ms. Greenbaum noted that the ZBA can limit occupancy for the services and for the number of daycare children. Occupancy loads need to be determined from the architect for the main assembly room in particular;
- "No Parking" signs may be needed along North Hadley Road except for the cut out area in front for daycare parking;

Ms. Greenbaum made a motion to continue the hearing to August 1, 2006 at 7:30 p.m. Mr. Simpson seconded the motion, and the vote was unanimous to continue the hearing to August 1, 2006.

Continued Public Hearing: August 1, 2006 and September 7, 2006

On August 1st, the applicant's revised plans were not ready, and the hearing was continued without testimony to September 7th, 7:30 p.m. at the Second Floor Meeting Room, Town Hall.

On September 7th, the applicant's revised plans were not ready, and the hearing was continued without testimony to October 19th, 7:30 p.m. at the Second Floor Meeting Room, Town Hall.

Continued Public Hearing: October 19, 2006

Erica Gees of Kuhn Riddle Architects represented the petitioner at the hearing. Rabbi Adelman and Assistant Fire Chief Mike Zlogar also were present. Ms. Gees had submitted revised site and floor plans and gave the following information concerning the plans:

A. Site Plan

- The Board previously had expressed concerns about having the proposed parking spaces too close to the building, so the plans were revised to allow only 6 parking spots – 1 in the garage and 5 in the parking area off McClure Street;
- In conversations with the Town Manager, there is a possibility that parking could be available for the Chabad House on the north side of North Hadley Road, directly across from the house. There are “no parking” signs along the south side of the street. The petitioners are hoping to obtain 3 designated spots, 2 for staff and 1 for child care drop-off;
- There will be a handicapped walkway from North Hadley Road to the front entrance of the daycare;
- The remainder of the building does not need additional handicapped access because there is no proposed use change to the original part of the house or the apartments;
- The three proposed trees within the Town right-of-way near the parking area along McClure Street were approved by both the Amherst Tree Warden and the Public Shade Tree Committee. A memo from the Conservation Director stating this approval was submitted for this hearing. The trees will help to screen the parking area, and will help prevent cars from parking all over the place along McClure Street;
- Parking spaces will be marked and there will be wheels stops for the cars, which will help to limit the number of cars parking along McClure as well;
- Spot #6 on the submitted plan is within 8 feet of the building. It may need a waiver from the Board in order to be a viable parking space;
- The porch stairs next to the parking area do exit to the north, not to the parking area, and therefore are not a safety issue for parking space #6;
- The main egresses for the building are the front and back doors of the original house;
- The existing means of egress for all the housing units are adequate;
- The triangle area near the porch next to the parking will be grassed, which will also cut down on extraneous parking along McClure Street and on the lot;
- The proposed play area for the daycare will be fenced and in the backyard; If more space is needed, they may use an area in the front of the building or extend the play area into the backyard setback as long as the fence is less than six feet tall (Section 6.25 of the Bylaw.) A new sketch of the play area will be submitted if the playground plans change;
- No paved area will be provided or needed for the daycare;
- The fire pit can be removed if need be;
- The new trash/recycling shed contains 2 wheeled toters, 6 trash cans, 6 blue boxes for paper, and 6 red boxes for bottles and cans;
- A dumpster is not wise to use because so many UMass students use/abuse nearby dumpsters; it was tried before;
- The garage currently is used for storage and holiday festivities. In the future, one space will be used for parking, and the other half of the garage will be used for storage;
- A correction to the submitted site plan is that there is no fencing to the south of the garage; only shrubs and over-growth are along the property boundaries;
- UMass has given written permission for residents/guests of the Chabad House to park in the UMass lot across the street from 5 p.m. to 7 a.m.

B. Floor Plans

- The newer section will be continue to be mixed use – 2 dwellings plus assembly, classes and the proposed daycare;

- There will be fire separation installed between the first floor and the basement, and a fire wall between the newer section and the main house;
- The main house, 35,000 cubic feet, has two uses – dwelling unit plus assembly space;
- The French door between the assembly space and the first-floor kitchen will be changed to have a two-hour fire rating;
- The first floor kitchen will have a one-hour protection for the walls and ceiling, since there are bedrooms directly above;
- A new fire detection system will be installed;
- There will be just one kitchen in the basement, a private one just for the residents;
- The basement kitchen will be non-kosher; the first-floor kitchen will be kosher and used for religious purposes;
- The main house will have 4 unrelated residents; Rabbi Adelman, who stays only occasionally, will be considered a “guest”.

Assistant Fire Chief Mike Zlogar spoke about the fire safety of the buildings. He said that 10 years ago (1996) the Fire Department documents on the Chabad House classified it as multifamily. The Fire Department issued an order that a sprinkler system and smoke detectors be installed. This order was not followed, and there is no evidence that an appeal was made to the Sprinkler Appeal Board. Moreover, there was no evidence that a fire alarm system was installed either.

In Mr. Zlogar's opinion, the house is used as a boarding house. The fire code states that if the building as a whole (using the perimeter of the building) has more than 6 people residing in it that are not part of a family, then a sprinkler system is required. In addition, during holidays the building is used to capacity and it can become very dangerous. The 1996-97 order needs to be resolved, he said. Also, he asked that the ZBA not make a decision until the building follows proper fire safety requirements.

Both the Building Commissioner Bonnie Weeks and Ms. Gees stated that, from their perspective, how the building is classified in terms of the building code determines whether a sprinkler system is required. They gave the following analysis:

- All the uses in the building are religious in nature – dwellings, assembly, daycare, etc. – and define the community;
- The main house can be considered 3-B construction; with installation of fire walls separating the various uses, a sprinkler system is not needed;
- The newer section can be considered 5-B construction, and is limited. With fire separation walls and no assembly use, it can be exempt from a sprinkler system as well;
- The sprinkler system is too costly for the Chabad House, which has very limited means, and the applicants will no longer have boarders in excess of Bylaw requirements. It will be a 3-family house, with one or two of the units having a family plus three unrelated residents;
- The applicant guarantees that the limited use will be as described above, and will be enforced by him.

In terms of fire protection, Rabbi Adelman stated that the State Fire Marshall had ruled in 1997 that the building did not need a sprinkler system. He also said that a hard-wired fire detection system was installed on the old section, inspected and approved independently of the Town.

Chief Zlogar said that the Fire Department will put the Chabad House on a schedule for regular inspections from his department.

Ms. Weeks agreed that for a child care facility, an assembly use, and any common spaces related to either use (e.g., the first-floor kitchen, entrances), there will be yearly inspections.

The Board asked the petitioner to resubmit the activity grid to show the maximum number of participants at any one time, and to indicate the maximum number of guests that may stay at the house.

Mr. Simpson made a motion to continue the hearing to November 20, 2006 at 7:30 p.m. Ms. Ford seconded the motion, and the vote was unanimous to continue the hearing to November 20th.

Continued Public Hearing November 20, 2006

Rabbi Adelman, Ms. Ergas and Ms. Gees were present to speak to the petition.

Mr. Simpson addressed the letter to Rabbi Adelman from Greg Wheeler, Assistant Manager of the UMass Parking Services, dated 11/20/06. The letter gives three options for parking in UMass lot #32 – 1) Reserved spaces for use solely for Chabad House, 2) Departmental passes, for one day use, and 3) Child Care temporary permits – to allow a 15 minute drop-off for parents. The Board concurred that option #1, Reserved spaces, is the appropriate one for the daycare staff. Rabbi Adelman said that he would purchase the space permits. The Board also agreed that option #3, Child Care temporary permits, should be purchased by the parents themselves.

Ms. Ford noted that the parents and children must cross North Hadley Road from the UMass parking lot in order to get to the daycare facility. The Town DPW will install a cross-walk to the daycare walkway, Ms. Gees stated.

Ms. Greenbaum asked how the activity grid had changed since the last date of the hearing. Ms. Ergas gave the following information:

- The overnight guests are there mainly for holidays, 3-4 times per year. They are housed in both residential areas and the offices;
- There are bedrooms upstairs in the older section that are reserved for guests;
- The *mikvah* is used sometimes by men as well as women. The men have their own separate entrance that is accessed via the proposed daycare space;
- Apartments 1 and 2 will be reserved as residences for Rabbi Gottlieb and Levenberg and their families. There may be one boarder in Levenberg's apartment, but there will not be 4 unrelated persons in either apartment.

Ms. Greenbaum noted that the conditions of this Special Permit could limit the number of bedrooms in the original section of the house and could prohibit any sleeping areas or bedrooms in the basement.

Ms. Gees gave occupancy limits for the two assembly spaces:

1. The first floor assembly room in the older section is 527 square feet of usable space. The capacity limit is 37 people seated and 72 people standing;
2. The proposed daycare space has 845 square feet of usable space.

Ms. Greenbaum noted that Rabbi Adelman's family is more than 10 persons, and they all stay in one room for holidays or religious services. Rabbi Adelman corrected the misperception, stating that his family uses two bedrooms on the top floor of the house for his family.

Ms. Weeks stated that the sanitary code requires 70 square feet for a sleeping area, but no code for the number of people per room.

Ms. Ford asked if the entire garage could be used for parking. Rabbi Adelman said that half of the garage is needed for storage.

Mr. Simpson asked the other members of the Board if they opposed any of the proposed uses in the Chabad House, and the classification of them as religious and/or educational uses. The Board agreed that the proposed uses would be classified as religious or educational uses, including everyone living in the building.

Mr. Simpson made a motion to close the evidentiary portion of the hearing. Ms. Greenbaum seconded the motion, and the vote was unanimous to close the hearing.

Public Meeting:

The Board agreed that all of the proposed uses in the building are classified as religious and/or educational under Section 3.330 of the Zoning Bylaw and approval of the Special Permit should be granted, subject to conditions that would improve the appearance of the site, decrease the number of cars parked on the streets or lot, and track the safety issues associated with the multiple uses.

Because the setbacks on the property are non-conforming, whether or not the uses are classified as religious as per Section 6.6 of the Zoning Bylaw, Section 9.22 governs the approval of the application. The Board of Appeals may authorize, under a Special Permit, a non-conforming building to be reconstructed, provided that it is not substantially more detrimental to the neighborhood than the existing non-conformity. Given the conditions that the Board will impose as part of the Special Permit and the fact that inspections of the building will now be possible on a regular basis, the Board felt that a Special Permit should improve the impact of the Chabad House on the neighborhood.

The Board spent the majority of the public meeting crafting conditions that will be part of the Special Permit.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because there are other multifamily dwellings in the immediate area, and the Chabad House is located next to UMass, where many of its students and religious members live.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the change in the site plan should limit the number of cars parking along McClure Street. Also, the additional trees along McClure Street should shield the Chabad House more, and the new trash shed should keep the litter from accumulating in the yard.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because the conditions imposed on the Special Permit should limit excess parking and the blocking of McClure Street in the future.

10.384 – Adequate and appropriate facilities would be provided for the proper operation

of the proposed use because the fire and building codes will now be met with the Special Permit and inspections of the building will occur on a regular basis.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because the conditions of the Special Permit will limit the amount of parking on site and will relocate two of the required spaces to the University parking lot. The existing signs for the Chabad House are small, in keeping with the residential area, and will not be changed or increased in number.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the recycling and refuse will now be kept in a shed, and a resident of the house will be in charge of proper upkeep of the refuse operation.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses, because three trees will be planted along McClure Street to help screen the parking for the neighbors. Also, the corner of the lot will be seeded and cars kept from parking there with the installation of new curbing.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because all new external lighting will be downcast.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because there are other multifamily structures nearby that have been enlarged, and the Chabad House is located adjacent to the University with dense building.

10.397 – The proposal provides adequate recreational facilities, open space and amenities for the proposed use because a fenced playground will be part of the proposed daycare facility.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because religious and educational uses are usually allowed by right in all zoning areas. In addition, a Special Permit for the Chabad House will help to protect the health, safety, convenience and general welfare of the neighborhood and the inhabitants of the Town of Amherst in general.

Zoning Board Decision:

Ms. Greenbaum made a motion to APPROVE the Special Permit, subject to conditions. Ms. Ford seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit to the Chabad House under Section 9.22 of the Zoning Bylaw for uses on a non-conforming lot as follows: a) to recognize the existing residential and assembly building uses; b) to add a use of the building as a daycare center on the premises at 30 North Hadley Road, (Map 11A /Parcel 13, R-G Zoning District).

THOMAS SIMPSON

BARBARA FORD

HILDA GREENBAUM

FILED THIS _____ day of _____, 2006 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2007.
NOTICE OF DECISION mailed this _____ day of _____, 2006
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2007,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to the Chabad House under Section 9.22 of the Zoning Bylaw for uses on a non-conforming lot as follows: a) to recognize the existing residential and assembly building uses; b) to add a use of the building as a daycare center on the premises at 30 North Hadley Road, (Map 11A /Parcel 13, R-G Zoning District), subject to the following conditions:

1. All residents shall be associated with the religious life of the Chabad House – religious services, events and/or classes.
2. The building shall be limited to three dwelling units only.
3. All spaces in the three dwelling units shall be used only as shown on the submitted floor plan. No additional or accessory uses shall occur without the approval of the Board under an amendment to this permit.
4. Each of the residential units shall be occupied by no more than four unrelated individuals. No basement rooms shall be used as bedrooms.
5. Only the rooms labeled as bedrooms on the submitted floor plan drawn by Kuhn Riddle Architects, dated 6/13/06 shall be used as bedrooms.
6. The daycare facility shall be located in the basement of that section of the building built in 1996.
7. The playground area for the daycare operation shall be located in the back yard and shall be fenced.
8. The *mikva* area shall not be accessible from the daycare room located in the basement of the newer section. The doorway between the two spaces shall be alarmed and locked during the daycare facility's hours of operation.
9. The assembly room located on the first floor of the original house shall be the principal location for religious services, community meals and educational classes.
10. Occupancy of the assembly room shall not exceed 37 people for services with chairs, or 72 people for functions without chairs.
11. Revised final site and floor plans shall be submitted for review and approval at a public meeting of the Board prior to March 1, 2007, or prior to the issuance of the certificate of occupancy, whichever is first.
12. A revised Management Plan and Activity Grid shall be submitted for review and approval at a public meeting of the Board prior to March 1, 2007, or prior to the issuance of the certificate of occupancy, whichever is first.
13. The Activity Grid shall be incorporated as part of the Management Plan for the Chabad House.
14. The duration of overnight guests shall be no longer than 8 days.
15. Parking on site shall not exceed six vehicles – one space in the garage and five spaces in the parking area outside the garage.
16. Wheel stops shall be installed for the five parking spaces in the parking area.

17. Two additional parking spaces shall be obtained each semester for lot 32 from the University of Massachusetts or from the Town of Amherst in any public permit parking system the Town may develop for this area in the future.
18. The area along McClure Street and in the front of the house that is not part of the parking area shall be loamed, seeded, fertilized, watered, and appropriately fenced-off until grass is well established.
19. The three street trees approved by the Amherst Tree Warden for planting along McClure Street shall be planted as shown on the submitted site plan. The tree species shall be chosen from the list of recommended street trees from the Town's Landscape Guidelines and approved by the Tree Warden.
20. All landscaping shall be continuously maintained.
21. There shall be no parking on the property other than in the garage and designated parking area.
22. The succahmobile shall be removed from the property, and the back yard shall be kept free from litter at all times.
23. All trash and recyclables shall be stored in the shed only, shall be removed at least once per week, and the shed shall be cleaned on a regular basis.
24. There shall be a resident property manager other than the chief rabbi (currently Rabbi Adelman) whose name and telephone number shall be submitted to the Board and to the Inspection Services, Health Department and Fire Department for emergency contacts.
25. All external lighting shall be downcast.
26. Any changes in signage shall be submitted to the Board for review at a public meeting.
27. The petitioner shall submit inspection reports from Inspection Services, Health and Fire Department that shall be reviewed by the Board at a public meeting every three years.
28. Any changes in management of the house shall be submitted to the Board for review at a public meeting.
29. This permit shall expire upon any change of use on the property, either within the operation of Chabad House, or from Chabad House to a different use or institution.

THOMAS SIMPSON, CHAIR
Amherst Zoning Board of Appeals

DATE